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SERIAL NUMBER	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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08/354,177 12/12/94 CHILDRESS B 41933

D3M1/0822

TRAN LIEN EXAMINER

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ART UNIT	PAPER NUMBER
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1302

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DATE MAILED: 08/22/95

This is a communication from the examiner in charge of your application.
COMMISSIONER OF PATENTS AND TRADEMARKS

☒ This application has been examined ☐ Responsive to communication filed on _____ ☐ This action is made final.

A shortened statutory period for response to this action is set to expire 3 month(s), _____ days from the date of this letter.
Failure to respond within the period for response will cause the application to become abandoned. 35 U.S.C. 133

Part I THE FOLLOWING ATTACHMENT(S) ARE PART OF THIS ACTION:

1. ☒ Notice of References Cited by Examiner, PTO-892.
2. ☒ Notice of Draftsman's Patent Drawing Review, PTO-948.
3. ☐ Notice of Art Cited by Applicant, PTO-1449.
4. ☐ Notice of Informal Patent Application, PTO-152.
5. ☐ Information on How to Effect Drawing Changes, PTO-1474.
6. ☐ _____

Part II SUMMARY OF ACTION

1. ☒ Claims 1-29 are pending in the application.
Of the above, claims _____ are withdrawn from consideration.
2. ☐ Claims _____ have been cancelled.
3. ☐ Claims _____ are allowed.
4. ☒ Claims 1-29 are rejected.
5. ☐ Claims _____ are objected to.
6. ☐ Claims _____ are subject to restriction or election requirement.
7. ☒ This application has been filed with informal drawings under 37 C.F.R. 1.85 which are acceptable for examination purposes.
8. ☐ Formal drawings are required in response to this Office action.
9. ☐ The corrected or substitute drawings have been received on _____. Under 37 C.F.R. 1.84 these drawings are ☐ acceptable; ☐ not acceptable (see explanation or Notice of Draftsman's Patent Drawing Review, PTO-948).
10. ☐ The proposed additional or substitute sheet(s) of drawings, filed on _____, has (have) been ☐ approved by the examiner; ☐ disapproved by the examiner (see explanation).
11. ☐ The proposed drawing correction, filed _____, has been ☐ approved; ☐ disapproved (see explanation).
12. ☐ Acknowledgement is made of the claim for priority under 35 U.S.C. 119. The certified copy has ☐ been received ☐ not been received ☐ been filed in parent application, serial no. _____; filed on _____.
13. ☐ Since this application appears to be in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11; 453 O.G. 213.
14. ☐ Other

EXAMINER'S ACTION

1. The lengthy specification has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification.

2. Claims 2,5-6, 9-10,18 and 25 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 2 is indefinite. The structural relationship among the patch, the bag and the first and second shrinkable film is not clear. If the second film is part of the bag, how can the adhesive layer be between the first and second film because the first shrinkable film is part of the patch.

In claim 5, " the first homogenous ethylene/alpha olefin copolymer " is unclear because claim 1 has not set forth any first or second homogenous copolymer. Also, the claim seems redundant because it just repeats the limitation of claim 4.

In claim 6, " the homogeneous ethylene/alpha olefin " is indefinite because it is not known if this is referring to the first or second copolymer.

In claim 9: Lines 3-4, it is not clear how the phrase " at 185°F, of the second heat-shrinkable film " tie in with the rest of the claim.

Claim 10 has the same problem as claim 9.

Claim 18 is vague and indefinite. It contradict the previous claim. Claim 16 states that the two outer layers comprise homogenous ethylene/alpha olefin copolymer and claim states that they are substantially free of homogenous ethylene/alpha olefin copolymer.

In claim 25: Line 2, it is suggested applicant delete the phrase " the bag comprising " to make the claim clearer.

3. The following is a quotation of 35 U.S.C. § 103 which forms the basis for all obviousness rejections set forth in this Office action:

A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Subject matter developed by another person, which qualifies as prior art only under subsection (f) or (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person.

4. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 86 S.Ct. 684, 15 L.Ed. 2nd 545 (1966), 148 USPQ 459, that are applied for establishing a background for determining obviousness under 35 U.S.C. § 103 are summarized as follows:

1. Determining the scope and contents of the prior art;
2. Ascertaining the differences between the prior art and the claims at issue; and
3. Resolving the level of ordinary skill in the pertinent art.

5. Claims 1-29 are rejected under 35 U.S.C. § 103 as being unpatentable over

Dudenhoeffer et al.

Dudenhoeffer et al. disclose a heat shrinkable film bag with a thermoplastic film patch. The patch surface comprises a member selected from the group consisting of ethylene vinyl acetate, very low density polyethylene(VLDPE) and linear low density polyethylene(LLDPE). The patch may be a monolayer film or a multilayer film. The VLDPE has a

density of from .86-.914g/cm³ and the LLDPE has densities in the range of about .915-.930g/cm³. Both VLDPE and LLDPE comprise copolymers of ethylene with alpha olefins. The patch comprises about 85-35% VLDPE. The patch bag is used for packaging bone food products such as beef rib. (See entire reference)

Dudenhoeffer et al. do not disclose that the patch is heat shrinkable as stated in claims 1, 8-10. However, it is not seen how this differentiate the prior art from the claimed invention. Dudenhoeffer et al. use VLDPE and LLDPE which are ethylene/alpha olefin copolymers; this is the same material used in the claimed invention. Applicant has not shown the claimed invention produces unexpected properties over the prior art product. Claims 1,23-26 require that the bag contains additional patches. It would have been obvious for one of ordinary skill in the art to put additional film patches on the bag disclosed by Dudenhoeffer et al. to increase the strength of the bag. Putting additional patches is well within the determination of one skilled in the art. As to the specific arrangement of the polymeric layers of the film as claimed in claims 15-20,22-25, this is a matter of preference and is well within the determination of one skilled in the art. It would have been obvious to arrange the polymeric layers in a way that would give the most optimum properties to the bag.

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Norpoth et al., Yoshimura et al., Quacquarella et al., Ferguson and Ishio et al. all disclose films comprising ethylene/alpha olefin copolymers.

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Dudenhoeffer et al. (5376394) disclose bone-in food packaging article.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lien Tran whose telephone number is (703)308-1868. The examiner can normally be reached on Monday-Thursday from 8:30-6:00. The examiner can also be reached on alternate Friday from 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Donald E. Czaja, can be reached on (703)308-3852. The fax phone number for this Group is (703)305-3602.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703)308-0648.

Lien Tran *LT*
14 August 1995

Donald E. Czaja
DONALD E. CZAJA
SUPERVISORY PATENT EXAMINER
GROUP 130